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Defendant.

REPORT & RECOMMENDATION

Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only

1 dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his
2 claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)
3 (quoting *Iqbal*, 556 U.S. at 678).

4 Here, plaintiff brings a complaint against the Federal Justice Department, alleging it has
5 been disturbing him with ever-intensifying audio messages for approximately seven years. (Compl.
6 (ECF No. 1-1).) Plaintiff alleges the audio messages are a “life sentence” that are causing pain,
7 seizures, and the inability to work or sleep. (*Id.*) Plaintiff further alleges the audio messages have
8 caused him to have seven heart attacks. (*Id.*) According to plaintiff, while he was hospitalized, the
9 Justice Department instructed hospital staff to forcefully catheterize plaintiff. (*Id.*) He also states
10 the Justice Department has attempted to murder him by breaking into his home and putting feces in
11 his medications. (*Id.*)

12 Even liberally construing plaintiff’s complaint, the court finds that his factual allegations
13 describe fantastic and delusional scenarios and do not state a claim upon which relief can be
14 granted. Given that plaintiff’s complaint does not set forth a plausible claim, it is recommended
15 that the complaint be dismissed with prejudice because amendment would be futile. *See Lopez v.*
16 *Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (stating that a district court is not required to provide
17 leave to amend a complaint if the complaint could not possibly be cured by the allegation of other
18 facts).

19 IT IS THEREFORE ORDERED that Plaintiff Michael A. Hamilton’s application to
20 proceed *in forma pauperis* (ECF No. 4) is GRANTED.

21 IT IS FURTHER ORDERED that the clerk of court must detach and file plaintiff’s
22 complaint (ECF No. 1-1).

23 IT IS RECOMMENDED that Plaintiff Michael A. Hamilton’s Complaint (ECF No. 1-1) be
24 DISMISSED WITH PREJUDICE as delusional and frivolous.

25 NOTICE

26 This report and recommendation is submitted to the United States district judge assigned to
27 this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may
28 file a written objection supported by points and authorities within fourteen days of being served

1 with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may
2 waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
3 1991).

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5 DATED: July 19, 2018

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8 **C.W. Hoffman, Jr.**
9 **United States Magistrate Judge**
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